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November 2, 2004

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

RE: STB Docket No. AB-303 (Sub. No. 27)
Wisconsin Central, Ltd.-Abandonment- In
Ozaukee, Sheboygen and Manitowoc Counties, WI

NOV 13 2004

Part of
Public Record

**Offer of Financial Assistance Submitted On
Behalf of Wisconsin Department of Transportation
And Wisconsin & Southern Railroad Co.**

Dear Mr. Williams:

I am writing on behalf of the Wisconsin & Southern Railroad Co. ("WSOR"), in connection with a "Motion" filed in the above-captioned proceedings by Pioneer Rail Corp or its subsidiary, Decatur Junction Railway (hereafter "Pioneer"). WSOR urges the Board to reject the "Motion" as untimely and not contemplated by the Board's rules.

Today I was advised by David Konschnik of the Board's Office of Proceedings that Pioneer had submitted an electronic filing in the nature of a Motion for a 30 Day Extension to File an Offer of Financial Assistance. No copy was provided to the undersigned counsel contrary to the Board's Rules of Practice.

The Offer of Financial Assistance provisions of the ICCTA, 49 U.S.C. 10904(c), state clearly:

[w]ithin 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with

the Board.

The Board's regulations applicable to formal abandonments sought by application, 49 CFR 1152.27(c)(1), add:

(1) [A]n offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance application or exemption proceeding. The offer must be filed concurrently with the Secretary, Surface Transportation Board, Washington, D.C. 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application or petition for exemption. Once a decision is served granting an application or petition for exemption, however, the board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must [emphasis supplied] be filed and served no later than 10 days after service of the Board decision granting the application or petition for exemption. This filing and service is subject to the requirements of 49 CFR 1152.25(d)(1), (d)(2), and (d)(4).

The Board's regulations at 49 CFR 1152.25(d)(1), (d)(2), and (d)(4) specifically require that pleadings required under this part be received for filing at the Board's offices in Washington, D.C., within the applicable time limits with the date of receipt determinative. Moreover, offers of financial assistance made pursuant to 49 CFR 1152.27(c) must be filed on or before the statutory or regulatory due date.

Under these procedures, Pioneer's offer (or notification of a previously filed offer) would have been due by October 28. Pioneer has known of this abandonment proceeding since at least August 16, 2004, when it filed a "Notice of Intent to Submit an Offer of Financial Assistance" in the name of its Decatur Junction subsidiary.¹ Pioneer suggests in that filing that it needed certain additional information before it could file its offer. However, Wisconsin Central's application contains virtually all of the information needed to submit an offer.

¹ The only offer of financial assistance procedure contemplating the sort of notice that Pioneer has filed here is that applicable to "exempt abandonments" under 49 CFR 1152.50, which provides for an "Expression of Intent to File an Offer." See, 49 CFR 1152.27(c)(2).

Furthermore, WSOR is unaware of any request by Pioneer for a hi-rail inspection of the line or specific request to the applicant for the requested information.


The Board's financial assistance procedures do not contemplate, let alone countenance, the sort of delay Pioneer seeks here. When Congress originally wrote the predecessor to the current abandonment statute back in 1980, it expected that the former Interstate Commerce Commission would promptly entertain offers from potential offerors. While the Board's exemption procedures allow offerors to obtain extensions in exemption cases where the abandoning railroad has not provided sufficient information to permit an offeror to submit a timely offer, this is clearly not the case here. The Board's regulations require an abandonment applicant to submit its entire case as part of the application including most or all of the information sought by Pioneer which serves as the predicate for its dilatory motion.

Accepting Pioneer's Motion would make a mockery of strict statutory and regulatory deadlines, delay the applicant's sale to the State of Wisconsin, and be manifestly unfair to WSOR, the operating carrier desired by the on-line shippers. The Board should reject Pioneer's Motion.

I have advised the State of Wisconsin as to the filing of this Motion. The State reserves the right to file its own comments.

Please date stamp and return one copy of this filing for our records.

Sincerely yours,



John D. Heffner

Enclosures

cc: Daniel LaKemper, Esq. (by fax)
Allyn Lepeska, Esq. (by fax)
Secretary Frank Busalacchi
T.J. Litwiler, Esq. (by fax)
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Mr. William Gardner